IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 536 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ABDUL MAJID ABDUL HAK ANSARI - Appellant (Orig. Accused)

Versus

STATE OF GUJARAT - Respondent

Appearance:

1. Criminal Appeal No. 536 of 1997

MR G RAMAKRISHNAN for the Appellant

MR MA BUKHARI, APP for Respondent State

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE D.K.TRIVEDI

Date of decision: 06/11/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI for the Court)

1. The appellant challenges the judgement and order dated 3rd March 1997 of the learned Additional City Sessions Judge, 12th Court, Ahmedabad in Sessions Case No. 198 of 1996 convicting the appellant for the offence under section 20(b)(ii) of the Narcotic Drugs & Psychotropic Substances Act, 1985 and section 66(1)(b) of the Bombay Prohibition Act and sentencing him to suffer rigorous imprisonment for a period of ten years and to pay fine of Rs.1 lakh, in default to undergo further rigorous imprisonment for two years. No separate sentence was imposed for the offence under section 66(1)(b) of the Bombay Prohibition Act.

2. According to the prosecution, on 18th May 1996, the complainant - Police Inspector - Chandansinh Chauhan had received information from police constable Khumansinh that one person, whose description was given, dealing in `charas', was to come from Odhav side for going towards `Soni Ni Chawl' situated in Rehmatnagar area with `charas'. The complainant reduced the information in writing and informed his superior officer. Thereafter, the raiding party proceeded to the place from where the person described was to pass with `charas'. He was spotted and on search, he was found to be possessing 250 grams of `charas'. The fact that the material was `charas' was ascertained by calling an officer of the Forensic Science Laboratory, who after examination made his endorsement behind exh. 12 stating that the material was prima facie `charas'. After the muddamal was seized and sealed under the panchnama, it was forwarded to the Forensic Science Laboratory and on analysis, it was found to be `charas'. According to the prosecution, the material had remained safe during the intervening period and was delivered in a sealed state to the Forensic Science Laboratory.

3. The trial Court found that the prosecution had proved beyond any reasonable doubt that 250 grams of `charas' was found from the possession of the accused on 18th May 1996 and convicted and sentenced him, as stated hereinabove.

4. The learned counsel appearing for the appellant contended before us that the panch witness had not supported the prosecution and therefore, there was no independent witness to support the factum of raid and apprehension of the accused with the contraband `charas'. It was further argued that there was non-compliance of the provisions of section 42(2) of the said Act, because, the superior officer was not informed as required by that

provision and no copy of the information was supplied to the superior officer. The learned counsel also argued that independent witnesses were not examined by the prosecution without there being any valid reason for dropping them. He submitted that the second panch witness, the fruit vendor, Prahladbhai Chelabhai, who is said to have weighed the muddamal during the seizure proceedings and the officer from the Forensic Science Laboratory Mr. Ambalia who was called and had given his prima facie report about the material being `charas', were not examined and therefore, it should be held that the prosecution case that the `charas' was seized from the accused was not believable. The counsel finally contended that the mandatory provisions of the said Act contained in sections 55 and 57 were also breached. The learned counsel argued that, to give meaning and content to the legislative safeguards provided by section 50 of the said Act, cogent and reliable evidence and not merely the statement of a police officer must be brought on record to hold that the person to be searched was informed of his right to be searched in the presence of a gazetted officer or magistrate, but he chose to decline such offer.

5. The learned Additional Public Prosecutor submitted that the decision of the trial Court was based on a proper appreciation of the reliable evidence which was adduced by the prosecution which establishes beyond any shadow of doubt that the appellant was found to be in possession of 250 grams of `charas' on 18th May 1996 in respect of which he did not have any pass or permit and therefore, he was liable to be convicted for the offence under section 20(b)(ii) of the said Act and section 66(1)(b) of the Bombay Prohibition Act.

6. P.I. Chandansinh Chauhan, in his deposition exh.10, has stated that he was working in the Crime Branch on 18th May 1996 when he received an information from police constable Khumansinh at 3.50 p.m. that one person named Abdul Majid Abdul Hakka (present appellant), resident of Rehmatnagar, House No. 80, wearing a brown pant and white bushirt was to come with a quantity of `charas' from Odhav for going to Soni's Chawl in Rehmatnagar. On receiving this information, he telephonically informed his superior officer and also made a note in the station diary at Srl. No. 9, which is at exh.11. He called two panch witnesses, explained to them the facts and drew the first part of the panchnama taking their signatures thereon. Thereafter, alongwith the panch witnesses and the police party consisting of police constable Khumansinh, police

constable Krushnakumar, police constable Yogendrasinh as well as P.I. (DCB) Shivnani and others he proceeded to the destination where they got down from the vehicle and dispersed and stood in watch. After sometime, the accused was seen to be coming from Odhav side wearing a brown pant and a white bushirt. When he came near the panchas, he was stopped and on being asked about his name, gave it as Abdul Majid Abdul Hakka. This witness introduced himself and the panch witnesses to the accused and offered him to search them and the accused had searched them. This witness informed the accused that he was to be searched and asked him whether he would like to be searched in presence of an executive magistrate, but the accused declined that offer. Thereafter, he was searched and from the right pocket of his pant, a transparent plastic bag was found, in which there was a black coloured material shaped into a ball and a rectangular piece of black coloured material. This material, on being smelt by this witness and panchas, appeared to be `charas'. At that time, an expert from the Forensic Science Laboratory Shri Ambalia was called by sending `yadi' exh.12 and after he came, he examined the said material and opined that it was `charas', which opinion he endorsed at the reverse of exh.12. Then the police constable Krishnakumar was asked to bring someone for weighing the material and a nearby hawker Prahladbhai Chelabhai was called and he had weighed the material which was 250 grams. Thereafter, the material was covered in paper which was tied and a slip with signatures of the panch witnesses as well as the expert of the Forensic Science Laboratory Shri Ambalia was attached thereon and a seal of Police Inspector (DCB) was affixed on it. On being asked, the accused had stated that he did not have any pass or permit in respect of the said quantity of `charas'. This witness has proved the contents of the panchnama exh.13. He had filed the complaint exh.14 which fully corroborates his version. He has then stated that he had made a report under section 157 of the Criminal Procedure Code which is at exh.15. He has also proved the arrest memo exh.16. The muddamal was handed over by him to P.I. Shri Shivnani who carried out the further investigation. A lengthy cross-examination of this witness has hardly any depth. He reiterated in his cross-examination that the muddamal material was found from the pant pocket of the accused at the time when he was searched in presence of the panchas. He stated that he had informed the Control Room through the wireless set for calling the expert from the Forensic Science Laboratory and within twenty minutes of the message, Shri Ambalia had reached the spot. He has stated that, after Shri Ambalia had examined the

material, it was weighed by calling the hawker and it took only a couple of minutes to weigh the material. He has denied that the accused was falsely implicated. His version is further supported by the entry exh.11 made in the station diary. There is an endorsement at the end of the station diary that information was sent to the Additional Police Commissioner (DCB). The requirements of section 42(2) are thus proved to have been satisfied. The `yadi' exh.12 also supports his version that he had called the expert from the Forensic Science Laboratory to opine whether the material which was found from the possession of the accused was `charas' or not. The endorsement by Shri Ambalia at the back of this `yadi' exh.12 shows that Shri Ambalia had examined the material during the seizure procedure and he opined that both these two articles namely, ball like black coloured substance and rectangular black coloured substance were prima facie `charas'. The fact that the material was weighed at that place and was found to be 250 grams alongwith the plastic bag is also recorded and the Additional Director Shri Ambalia has put his signature below the said opinion. The fact that information to the superior officer was given by a written report was clearly mentioned in the entry No.9 made in the station diary, which is at exh.11. The panchnama exh.13 narrates the detailed procedure which was followed while arranging their raid and seizing the muddamal articles from the accused. The receipt under which the muddamal article was recovered from the accused is at exh.16 and it records that, on 18-5-1996, the muddamal article was found from the possession of the accused in a transparent plastic bag and that it was 250 grams of `charas' which was seized in presence of the panchas, in lieu of which the receipt exh.16 was given. The accused was informed in writing that he was arrested in respect of the said offence and his thumb impression was taken both in the receipt as well as in this intimation, which are at exh.16.

7. Police Constable Khumansinh, in his deposition exh.17, has stated that he had passed on the information that the accused was to come with `charas' from Odhav for going to Soni's Chawl in Rehmatpura with his description to the P.I. Chauhan who made an entry in respect thereof in the station diary. Thereafter, the panchas and the police party had gone to the place where the accused was expected to pass from and when the accused came nearer, the raid was effected and the accused was offered to search them and he searched them and nothing objectionable was found from their person and thereafter, in presence of the panchas, his name was asked and he

also was searched and from his right pant pocket, the said muddamal `charas' was recovered. He has also deposed to the fact that the expert from the Forensic Science Laboratory was called, who on examining the muddamal recovered from the accused opined that it was `charas'. The hawker from a nearby place was called to weigh the material and it weighed 250 grams. The material was allowed to remain in the plastic bag and it was covered with paper and tied with a string and a slip containing signatures of panchas was affixed thereon and a seal was then affixed on it. He has stated that the accused was arrested under the arrest memo exh.16. In the cross-examination, he has maintained his version and has denied the suggestion that the material was forcibly put in the pant pocket of the accused. He has denied that the accused was given threat at any earlier point of time when this witness was working in Gomatipur police station. He has denied that the accused had started running away on seeing him. This witness fully supports the prosecution version that the muddamal `charas' was recovered from the accused on 18-5-1996 during the raid which was arranged pursuant to the information given by him to P.S.I. Chauhan that this accused was to pass from the place where he was stopped and recovery of muddamal was effected.

8. Ranjitsinh, Head Constable of the Crime Branch, in his deposition exh.18 has stated that while he was at the Crime Branch Police Station, Inspector Chauhan had given a report under section 157 of the Code of Criminal Procedure at 8.05 p.m. on the basis of which the crime was registered. Further investigation was handed over to P.I. Shivnani in respect of which an endorsement was made at the end of the First Information Report under section 157 of the Code.

9. Constable Ghanshyamsinh in his deposition exh.21 has stated that, on 18-5-1996, this incident had occurred and the muddamal was seized. P.S.I. Shivnani, on 21-5-1996, had given to him a sealed parcel with a forwarding letter which he had taken to the Forensic Science Laboratory and the muddamal was delivered there in a sealed condition under a receipt issued by the FSL at exh.23. He has also proved the forwarding letter exh.22. His deposition clearly establishes that the muddamal which was seized under the panchnama exh.13 was delivered in the Forensic Science Laboratory in a sealed condition under the receipt at exh.23. The fact that the muddamal was kept in a proper custody and in a sealed condition is also borne out from the deposition exh.25 of police constable Gokalbhai and of police constable Vikram

who has deposed at exh.27.

10. P.I. Om Prakash Sadhurav Shivnani, in his deposition exh.30, has also deposed to the fact that, on 18-5-1996, P.I. Chauhan had received the information from police constable Khumansinh that the accused was to bring `charas' from Odhav for going to Soni's Chawl. This information was noted down by P.I. Chauhan in the station diary at 3.55 p.m. and the superior officer was informed by him in writing and other officers were also informed telephonically. The panchas were called and all of them including this witness had gone to the place from where the accused was to pass. They were all in plain clothes. When the accused whose description they were having came there, he was stopped and on being asked, he had given his name. He was then offered to search them, but he did not search them. Thereafter, he was asked to search him, but he did not search him. Inspector Chauhan asked the accused whether he wanted to be searched in presence of the executive magistrate and had informed him that he was a gazetted officer. The accused did not express any desire to be searched in presence of the executive magistrate. Thereafter, from the right pocket of his pant, Inspector Chauhan had found the said material which was in a transparent plastic bag. He described the material and has also stated that the expert from the Forensic Science Laboratory was called and on examining the material, he had opined that it was `charas'. This witness has proved the report of the Forensic Science Laboratory which is at exh.31, which shows that the muddamal article which was recovered from the accused was `charas'.

11. It will thus be seen from the evidence adduced by the prosecution that it has been established beyond any shadow of doubt that the muddamal `charas' was recovered from the accused on 18-5-1996 during the raid which was arranged by the police after receiving information at 3.55 p.m. as noted in the station diary that the accused was to pass from the place where he was apprehended that the muddamal `charas' in his possession. It is also established from the above evidence that the provisions of sections 42(2), 50, 55 and 57 of the Act were duly complied with.

12. The fact that the panch witness has not supported the prosecution is hardly of any consequence in view of the aforesaid reliable evidence. The panch witness admitted his signatures on the panchnama exh.13. The panch witness Ramanbhai exh.20 has admitted having put his signatures in the panchnama exh.13. As held by the

Supreme Court in Modan Singh v. State of Rajasthan, reported in AIR 1978 SC 1511, if the evidence of investigating officer who recovered the material objects is convincing, the evidence as to recovery need not be rejected on the ground that seizure witnesses do not support the prosecution version. In State, Government of NCT of Delhi v. Sunil, reported in (2001) 1 SCC 652, the Supreme Court held that the Court has to consider the evidence of the investigating officer who deposed to the fact of recovery based on the statement elicited from the accused on its own worth. It was also held that when a police officer gives evidence in court that a certain article was recovered by him on the strength of the statement made by the accused, it is open to the court to believe the version to be correct if it is not otherwise shown to be unreliable. In our opinion, the guilt of the accused is clearly established by the prosecution and there is no violation of any of the provisions of the said Act.

13. In the above view of the matter, we hold that the guilt of the accused is established beyond any reasonable doubt and we find ourselves to be in complete agreement with the reasoning and findings of the trial Court. This appeal is, therefore, dismissed.

NOVEMBER 06, 2001 [R.K.ABICHANDANI, J.]

[D.K.TRIVEDI, J.]

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